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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JUAN CARLOS MEDINA et al.,

Plaintiffs and Appellants,

v.

WELLS FARGO BANK, N.A., et al.,

Defendants and Respondents.

B248729

(Los Angeles County
Super. Ct. No. BC495002)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Barbara A. Meiers, Judge. Affirmed.

Juan Carlos Medina and Maria Medina, in pro. per., for plaintiffs and appellants.

Severson & Werson, Jan T. Chilton and Adam A. Shajnfeld for Defendants and
Respondents.

Juan Carlos Medina and Maria Medina (plaintiffs) appeal from a judgment of dismissal entered after the trial court sustained without leave to amend the unopposed demurrer of Wells Fargo Bank, N.A. (also erroneously sued as Wells Fargo Home Mortgage, Wells Fargo Financial, Wells Fargo Financial Cards, and Wells Fargo Financial California, Inc.) (Wells Fargo). We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 31, 2012, plaintiffs filed a complaint against Wells Fargo and other defendants arising out of the alleged wrongful foreclosure on a deed of trust on plaintiffs' home. Pursuant to the standard of review of an order of dismissal following the sustaining of demurrer (*Abbott Laboratories v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346, 1350 & fn. 2), the facts alleged in the complaint are as follows.¹

In August 2005, plaintiffs obtained a line of credit secured by a deed of trust on real property located at 1419 East 74th Street, Los Angeles, California. After Juan sustained a workplace injury in January 2006, plaintiffs became delinquent on payments on the line of credit, and in December 2010 a "Notice of Default and Election to Sell Under Deed of Trust" was recorded. A notice of trustee's sale was recorded in March 2011, and in July 2011, the property was sold at a trustee's sale.

Plaintiffs filed the present action on October 31, 2012. The complaint alleges 11 causes of action against Wells Fargo, including wrongful foreclosure, fraud, negligence, unfair debt collection practices, violation of Civil Code sections 2923.5 and 2923.6, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, deceptive practices, and declaratory relief.

¹ "A demurrer tests the legal sufficiency of factual allegations in a complaint. (*Title Ins. Co. v. Comerica Bank—California* (1994) 27 Cal.App.4th 800, 807.) 'Our task in reviewing a judgment of dismissal following the sustaining of . . . a demurrer is to determine whether the complaint states, or can be amended to state, a cause of action. For that purpose we accept as true the properly pleaded material factual allegations of the complaint, together with facts that may properly be judicially noticed.' (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.)" (*Abbott Laboratories v. Franchise Tax Bd.*, *supra*, 175 Cal.App.4th at p. 1350 & fn. 2.)

Wells Fargo filed a demurrer to the complaint on March 1, 2013. Plaintiffs did not file written opposition to the demurrer, and following a hearing on April 4, 2013, the trial court sustained the demurrer without leave to amend. Judgment of dismissal with prejudice was entered on April 8, 2013, and notice of entry of judgment was filed the following day. Plaintiffs timely appealed.

DISCUSSION

Plaintiffs' opening and reply briefs appear to contend that the trial court erred in sustaining Wells Fargo's demurrer. However, for the reasons that follow, we cannot address this asserted error on the merits.

To prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052; *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752 (*Scott*).) Specifically, the appellant (or appellants) "must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879-880.)" (*Scott*, at p. 752.)

Here, plaintiffs' appellate briefs do not discuss the elements of *any* of their 11 causes of action, nor do they show that the facts pleaded are sufficient to establish such elements. Accordingly, plaintiffs fail to satisfy their appellate burden to affirmatively demonstrate error.

Plaintiffs attempt to show grounds for reversal by including in their appellate briefs copies of documents they believe substantiate their claims. We cannot consider these documents. Appellate review is generally limited to matters contained in the record—i.e., matters presented to the trial court. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.) Factual matters that are not part of the appellate record cannot be considered on appeal, and such matters should not be referred to in the briefs. (*Ibid.*; Cal. Rules of Court, rule 8.204(a)(2)(C).) Because plaintiffs did not present any of these documents in the trial court, we cannot consider them on appeal.

We are aware that plaintiffs have filed their appellate briefs in pro. per. However, “[p]ro. per. litigants are held to the same standards as attorneys. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 [‘A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.’] . . .” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) “A litigant has a right to act as his own attorney [citation] ‘but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded.’ ” (*Lombardi v. Citizens Nat. Trust etc. Bank* (1955) 137 Cal.App.2d 206, 208-209 [pro. per. litigants held to same standards as those represented by counsel].) Accordingly, because plaintiffs’ appellate briefs provide us with no legal basis on which to reverse the order sustaining the demurrer and resulting judgment, we affirm.²

DISPOSITION

The judgment of dismissal is affirmed. Both parties shall bear their own costs on appeal.

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EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.

² Plaintiffs urged at oral argument that we should reverse the judgment below because they were abandoned by their attorney, who did not file opposition to the demurrers. Because this issue was not raised below, we cannot address it on appeal.